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11

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 CENTER FOR BIOLOGICAL DIVERSITY
15 *et al.*,

16 Plaintiffs,

17 v.
18

19 MICHAEL S. REGAN, in his official capacity
as the Administrator of the United States
20 Environmental Protection Agency,

21 Defendant.
22

Case No. 3:20-cv-06020-WHA

**JOINT MOTION TO ENTER CONSENT
DECREE**

23 Defendant Michael S. Regan, in his official capacity as the Administrator of the United
24 States Environmental Protection Agency (“EPA”), and the Center for Biological Diversity and
25 the Center for Environmental Health (collectively, “Plaintiffs”), by and through the undersigned
26 counsel, hereby jointly move the Court to enter the attached Consent Decree (attached as
27 Exhibit A). In support of this motion, the Plaintiffs and EPA (collectively, the “Parties”) state as
28 follows:

1 1. Plaintiffs' First Amended Complaint (Dkt. No. 24) alleges that EPA has failed to
2 undertake certain non-discretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§
3 7401-7671q, and that such alleged failures are actionable under CAA section 304(a)(2),
4 42 U.S.C. § 7604(a)(2).

5 2. In Claim 1 of the First Amended Complaint, Plaintiffs allege that EPA issued a
6 limited disapproval and limited approval of a permitting rule, Rule 1-220, New Source Review
7 ("NSR") Standards (including [Prevention of Significant Deterioration ("PSD")] Evaluations),
8 submitted to EPA on November 15, 2016 as a revision to the Mendocino County Air Quality
9 Management District ("MCAQMD") portion of the California SIP. *Final Rule*, 82 Fed. Reg.
10 30,770 (July 3, 2017). Plaintiffs further allege that EPA failed to approve a SIP revision or
11 promulgate a FIP addressing the deficiencies identified in the limited disapproval of Rule 1-220
12 within two years of the effective date of EPA's July 3, 2017 final rule. *See* First Am. Compl.
13 ¶¶ 50-52.

14 3. In Claim 2 of the First Amended Complaint, Plaintiffs allege that EPA has not
15 taken final action on the following elements of three SIP submittals or revisions for the Eastern
16 Kern (Kern County), California nonattainment area for the 2008 ozone National Ambient Air
17 Quality Standards ("2008 ozone NAAQS") and that more than 12 months have passed since a
18 determination of completeness (including completeness by operation of law), *see* First Am.
19 Compl. ¶¶ 54-56:

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
2(a)	Contingency measures for volatile organic compounds ("VOC") and nitrogen oxides ("NOx") pursuant to 42 U.S.C. §§ 7502(c)(9) and 7511a(c)(9) and 40 C.F.R. § 51.1102 (hereinafter "Contingency Measures")	October 25, 2017	April 25, 2018
2(b)	Base year emissions inventory requirements pursuant to 42 U.S.C. §§ 7502(c)(3) and 7511a(a)(1) and 40	October 25, 2017	April 25, 2018

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	C.F.R. § 51.1115(a) (“Emissions Inventory”)		
2(c)	Emissions statement pursuant to 42 U.S.C. § 7511a(a)(3)(B) and 40 C.F.R. § 51.1102 (“Ozone Emissions Statement”)	October 25, 2017	April 25, 2018
2(d)	Nonattainment new source review pursuant to 42 U.S.C. § 7511a(a)(2)(C) (“NNSR”)	May 23, 2018	August 28, 2018
2(e)	Attainment demonstration pursuant to 42 U.S.C. §§ 7502(c)(1) and 7511a(c)(2)(A) and 40 C.F.R. § 51.1108(b) (“Serious Area Ozone Attainment Demonstration”)	October 25, 2017	April 25, 2018
2(f)	Reasonably Available Control Technology (“RACT”) Non-Control Techniques Guideline (“CTG”) VOC for Major Sources pursuant to 42 U.S.C. § 7511a(b)(2)(C) (“RACT Non-CTG VOC for Major Sources”)	August 9, 2017	February 9, 2018
2(g)	Control of VOC Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations, EPA-453/R-97-004 (Dec. 1997) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(h)	CTG for Automobile and Light-Duty Truck Assembly Coatings, EPA 453/R-08-006 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(i)	Control of VOC from Bulk Gasoline Plants, EPA-450/2-77-035 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(j)	Control of VOC Equipment Leaks from Natural Gas/Gasoline Processing Plants, EPA-450/3-83-007 (Dec. 1983) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(k)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VII: Factory Surface Coating of Flat Wood Paneling, EPA-450/2-78-032 (June 1978) pursuant to 42 U.S.C.	August 9, 2017	February 9, 2018

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	§ 7511a(b)(2)		
2(l)	CTG for Fiberglass Boat Manufacturing Materials, EPA 453/R-08-004 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(m)	CTG for Flat Wood Paneling Coatings, EPA-453/R-06-004 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(n)	CTG for Flexible Package Printing, EPA-453/R-06-003 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(o)	Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment, EPA-450/3-83-006 (Mar. 1984) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(p)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VIII: Graphic Arts-Rotogravure and Flexography, EPA-450/2-78-033 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(q)	CTG for Industrial Cleaning Solvents, EPA-453/R-06-001 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(r)	CTG for Large Appliance Coatings, EPA-453/R-07-004 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(s)	Control of VOC Emissions from Large Petroleum Dry Cleaners, EPA-450/3-82-009 (Sept. 1982) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(t)	Control of VOC Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(u)	Control of VOC Leaks from Petroleum Refinery Equipment, EPA-450/2-78-036 (June 1978) pursuant to 42 U.S.C.	August 9, 2017	February 9, 2018

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	§ 7511a(b)(2)		
2(v)	CTG for Offset Lithographic Printing and Letterpress Printing, EPA-453/R-06-002 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(w)	Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins, EPA-450/3-83-008 (Nov. 1983) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(x)	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires, EPA-450/2-78-030 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(y)	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products, EPA-450/2-78-029 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(z)	CTG for Metal Furniture Coatings, EPA 453/R-07-005 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(aa)	CTG for Miscellaneous Industrial Adhesives, EPA 453/R-08-005 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(bb)	CTG for Miscellaneous Metal and Plastic Parts Coatings, EPA 453/R-08-003 (Sept. 2008) ¹ pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(cc)	CTG for Paper, Film, and Foil Coatings, EPA 453/R-07-003 (Sept.	August 9, 2017	February 9, 2018

¹ The First Amended Complaint refers to two separate CTGs, “RACT VOC CTG Miscellaneous Metal Products Coatings (2008),” and “RACT VOC CTG Plastic Parts Coatings (2008).” First Amended Complaint, tbl. 1. These requirements are contained in a single CTG document.

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	2007) pursuant to 42 U.S.C. § 7511a(b)(2)		
2(dd)	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks, EPA-450/2-78-047 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(ee)	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds, EPA-450/2-77-025 (Oct. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(ff)	Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (“SOCMI”), EPA-450/3-84-015 (Dec. 1984) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(gg)	Control of VOC Emissions from Reactor Processes and Distillation Operations in SOCMI, EPA-450/4-91-031 (Aug. 1993) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(hh)	CTG for Shipbuilding and Ship Repair Operations (Surface Coating), 61 Fed. Reg-44,050 (Aug. 27, 1996) pursuant to 42 U.S.C. § 7511a(b)(2); <i>see also</i> EPA-453/R-94-032	August 9, 2017	February 9, 2018
2(ii)	Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA-450/2-77-022 (Nov. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(jj)	Design Criteria for Stage I Vapor Control Systems – Gasoline Service	August 9, 2017	February 9, 2018

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	Stations, EPA-450/R-75-102 (Nov. 1975) ² pursuant to 42 U.S.C. § 7511a(b)(2)		
2(kk)	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, EPA-450/2-77-036 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(ll)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume IV: Surface Coating for Insulation of Magnet Wire, EPA-450/2-77-033 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(mm)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA-450/2-77-008 (May 1977) ³ pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(nn)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume V: Surface Coating of Large Appliances, EPA-450/2-77-034 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(oo)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume III: Surface Coating of Metal Furniture, EPA-450/2-77-032 (Dec.	August 9, 2017	February 9, 2018

² This document is regarded as a CTG although it was never published with an EPA document number.

³ The Complaint refers to five separate CTGs, “RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks,” “RACT VOC CTG Surface Coating of Cans,” “RACT VOC CTG Surface Coating of Coils,” “RACT VOC CTG Surface Coating of Fabrics,” and “RACT VOC CTG Surface Coating of Paper.” First Amended Complaint, tbl. 1. These are a single CTG document.

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	1977) pursuant to 42 U.S.C. § 7511a(b)(2)		
2(pp)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products), EPA-450/2-78-015 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(qq)	Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026 (Oct. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(rr)	Control of Volatile Organic Emissions from Use of Cutback Asphalt, EPA-450/2-77-037 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(ss)	Control of VOC Emissions from Wood Furniture Manufacturing Operations, EPA-453/R-96-007 (Apr. 1996) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(tt)	Reasonable Further Progress (“RFP”) VOC and NO _x - Serious pursuant to 42 U.S.C. §§ 7511a(b)(1) and 7511a(c)(2)(B) and 40 C.F.R. § 51.1110(a)(2)	October 25, 2017	April 25, 2018

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4. In Claim 3 of the First Amended Complaint, Plaintiffs allege that EPA has not taken final action on nonattainment SIP submittals from the State of Colorado for the Denver Metro/North Front Range, Colorado nonattainment area for the 2008 ozone NAAQS addressing the following elements, and that more than 12 months have passed since a determination of completeness (including completeness by operation of law), *see* First Am. Compl. ¶¶ 58-60:

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guidelines	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
3(a)	RACT VOC Control Techniques Guidelines for Metal Furniture Coatings, EPA 453/R-07-005 (Sept. 2007)	May 31, 2017	December 1, 2017
3(b)	RACT VOC Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, EPA 453/R-08-003 (Sept. 2008) (only to the extent the CTG addresses miscellaneous metal products coatings)	May 31, 2017	December 1, 2017
3(c)	RACT VOC CTG, Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations, EPA-453/R-96-007 (Apr. 1996)	May 31, 2017	December 1, 2017
3(d)	RACT VOC CTG for Industrial Cleaning Solvents, EPA-453/R-06-001 (Nov. 2006)	May 31, 2017	December 1, 2017
3(e)	RACT VOC CTG for Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations, EPA-453/R-97-004 (Dec. 1997)	May 31, 2017	December 1, 2017
3(f)	Reg. No. 7, Section X (Use of Cleaning Solvents)	May 31, 2017	December 1, 2017
3(g)	Reg. No. 7, Section XIX (Control of Emissions from Specific Major Sources of VOC and/or NO _x in the 8-Hour Ozone Control Area)	May 31, 2017	December 1, 2017

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guidelines	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
3(h)	RACT Non-CTG for Major NO _x Sources/Submittal concerning combustion sources: Colorado Reg. 7, Sections XVI (Control of Emissions from Stationary and Portable Combustion Equipment in the 8-Hour Ozone Control Area), and XIX (Control of Emissions from Specific Major Sources of VOC and/or NO _x in the 8-Hour Ozone Control Area)	May 8, 2019 ⁴	November 8, 2019
3(i)	RACT Non-CTG VOC for Major Sources / Submittal concerning brewing related activities and wood furniture surface coating operations: Colorado Reg. 7, Sections I ⁵ (Applicability), II (General Provisions), VI (Storage and Transfer of Petroleum Liquid), IX (Surface Coating Operations), X (Use of Cleaning Solvents), XII (Volatile Organic Compound Emissions from Oil and Gas Operations), XIII (Graphic Arts and Printing), XVI (Control of Emissions from Stationary and Portable Combustion Equipment in the 8-Hour Ozone Control Area), XVII (Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines), XVIII (Natural Gas-Actuated Pneumatic Controllers Associated with Oil and	May 8, 2019	November 8, 2019

⁴ The cover letters to the submittals described by Items 3(h) and 3(i) are dated May 10, 2019, but they were received by EPA on May 8, 2019.

⁵ The First Amended Complaint refers to Section “1” of Regulation No. 7 as a part of a May 10, 2019 submittal. The parties agree that the Arabic “1” is a typographical error and that the reference was intended to be to Section “I,” with a Roman numeral.

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guidelines	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	Gas Operations), and XX (Control of Emissions from Breweries in the 8-hour Ozone Control Area)		

5. On February 11, 2021, the Acting Regional Administrator for EPA Region 8 signed a notice partially approving and partially conditionally approving elements of a Colorado SIP submission addressing the elements described above for Claim 3 as Items 3(a), 3(c), 3(d), 3(e), 3(f), 3(g), parts of 3(h) (excluding only subsections XVI.D.4.b.(i) and XVI.D.4.d.), and 3(i). *Final Rule*, 86 Fed. Reg. 11,125 (Feb. 24, 2021). Claim 3 is therefore moot as to Items 3(a), 3(c), 3(d), 3(e), 3(f), 3(g), the parts of 3(h) acted on, and 3(i).

6. In Claim 4 of the First Amended Complaint, Plaintiffs allege that EPA has not taken final action on the following elements in a SIP submittal for the Nevada County (Western part), California nonattainment area (“Western Nevada County”) for the 2008 ozone NAAQS and that more than 12 months have passed since a determination of completeness (including completeness by operation of law), *see* First Am. Compl. ¶¶ 62-64:

Item	State Implementation Plan Elements	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
4(a)	Contingency Measures	December 7, 2018	June 7, 2019
4(b)	Emissions Inventory	December 7, 2018	June 7, 2019
4(c)	Ozone Emissions Statement	December 7, 2018	June 7, 2019
4(d)	Serious Area Ozone Attainment Demonstration	December 7, 2018	June 7, 2019
4(e)	RFP VOC and NO _x – Moderate pursuant to 42 U.S.C. § 7511a(b)(1) and 40 C.F.R. § 51.1110(a)(4)(i) (“RFP VOC and NO _x – Moderate”)	December 7, 2018	June 7, 2019
4(f)	RFP VOC and NO _x - Serious pursuant to 42 U.S.C. §§ 7502(c)(2) and 7511a(c)(2)(B) and 40 C.F.R. § 51.1110(a)(4)(iii) (“RFP VOC and NO _x – Serious”)	December 7, 2018	June 7, 2019

7. In Claim 5 of the First Amended Complaint, Plaintiffs allege that EPA has not taken final action on the following elements in SIP submittals for the Riverside County (Coachella Valley planning area), California ozone nonattainment area (“Coachella Valley nonattainment area”) for the 2008 ozone NAAQS and that more than 12 months have passed since a determination of completeness (including completeness by operation of law), *see* First Am. Compl. ¶¶ 66-68:

Item	State Implementation Plan Elements	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
5(a)	Contingency Measures pursuant to 42 U.S.C. §§ 7502(c)(9) and 7511a(c)(9) and 40 C.F.R. § 51.1102 (“RFP Contingency Measures”)	April 27, 2017	October 23, 2017
5(b)	Contingency Measures pursuant to 42 U.S.C. § 7502(c)(9) (“Attainment Contingency Measures”)	May 5, 2017	November 5, 2017

8. The Parties reached agreement on a proposed Consent Decree resolving all claims except for the allegation set forth in Paragraph 34, Table 1, Item 51, of the First Amended Complaint in April 2021.⁶ Section 113(g) of the CAA, 42 U.S.C. § 7413(g), requires EPA to provide “a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing” upon the proposed Consent Decree. The proposed Consent Decree was noticed in the *Federal Register* on May 3, 2021. *Notice*, 86 Fed. Reg. 23,359 (May 3, 2021). That notice and comment process is now complete. EPA received no comments in response to the section 113(g) notice.⁷

⁶ Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the Parties jointly stipulated to partially dismiss Claim 2 (only as to element 2(tt) and Claim 4 (only as to element 4(c)). Dkt. No. 36.

⁷ *See* Docket No. EPA-HQ-OGC-2021-0304-0001, *available at* <https://www.regulations.gov/document/EPA-HQ-OGC-2021-0304-0001>.

1 9. Subsequent to publication of the section 113(g) notice, EPA took final action on
2 several SIP submittals. The Parties revised the proposed Consent Decree to address those
3 completed actions.

4 10. On May 13, 2021, the Acting Regional Administrator for EPA Region 9 signed a
5 notice approving elements of a California nonattainment SIP submission addressing the
6 Contingency Measures, Emissions Inventory, Serious Area Ozone Attainment Demonstration,
7 RFP VOC and NO_x – Moderate⁸, and RFP VOC and NO_x – Serious elements for the Western
8 Nevada County nonattainment area for the 2008 ozone NAAQS. *Final Rule*, 86 Fed. Reg.
9 27,524 (May 21, 2021). Claim 4 is therefore moot as to these elements.

10 11. On June 10, 2021, the Acting Regional Administrator for EPA Region 9 signed a
11 notice approving a California SIP submission addressing the deficiencies with Rule 1-220 of the
12 MCAQMD portion of the California SIP that were the basis for EPA’s July 3, 2017 limited
13 disapproval of MCAQMD Rule 1-220 at 82 Fed. Reg. 30,770. *Final Rule*, 86 Fed. Reg. 33,539
14 (June 25, 2021). Claim 1 is therefore moot.

15 12. On June 16, 2021, the Acting Regional Administrator for EPA Region 9 signed a
16 notice approving elements of a California nonattainment SIP submission addressing the
17 Contingency Measures, Emissions Inventory, and Ozone Emissions Statement⁹ elements for the
18 Eastern Kern (Kern County), California nonattainment area for the 2008 ozone NAAQS.
19 *Final Rule*, 86 Fed. Reg. 33,528 (June 25, 2021). Claim 2 is therefore moot as to the
20 Contingency Measures, Emissions Inventory, and Ozone Emissions Statement elements, items
21 2(a), 2(b), and 2(c).

23 ⁸ EPA refers to RFP VOC and NO_x – Moderate as “ROP” in the Final Rule. 86 Fed. Reg. at
24 27,530. For Moderate and above nonattainment areas, CAA section 182(b)(1), requires VOC
25 “emission reductions within 6 years after November 15, 1990, of a least 15 percent from
26 baseline emissions, accounting for any growth in emissions after 1990.” 42 U.S.C.
27 § 7511a(b)(1). “Rate of Progress” or “ROP” is the term EPA uses to distinguish the initial 6
28 year RFP requirement for ozone nonattainment areas from the requirements for subsequent RFP
intervals. *See* 40 C.F.R. § 51.1100(u) (defining ROP to mean “the 15 percent progress
reductions in VOC emissions over the first 6 years required under CAA section 182(b)(1)”).

⁹ *See supra* note 6.

1 13. The proposed Consent Decree published pursuant to CAA section 113(g),
2 42 U.S.C. § 7413(g), *see* 84 Fed. Reg. 46,519, has been revised to remove the obligations for
3 EPA to take actions related to Claim 1, a portion of Claim 2, and Claim 4, which are now moot
4 as described above.

5 14. The proposed Consent Decree requires EPA to take final action on the remaining
6 SIP submittals in Claims 2, 3, and 5 by dates certain as set forth in Paragraphs 1.a, 1.b, and 1.c
7 of the proposed Consent Decree.

8 15. The Parties jointly request that the Court enter the proposed Consent Decree.

9 16. Through the Consent Decree, EPA and Plaintiffs indicate their agreement that
10 the Consent Decree is fair, reasonable, and in the public interest. The Court should therefore
11 enter the attached Consent Decree.

12 WHEREFORE, the Parties respectfully move the Court to enter the attached Consent
13 Decree.

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1 Respectfully submitted,

2 Date: July 8, 2021

3 JEAN A. WILLIAMS
4 Acting Assistant Attorney General

5 /s/ Leslie M. Hill

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